EXHIBIT D

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August 16, 2007

VIA FACSIMILE & FEDERAL EXPRESS

The Honorable Lilliana Estrella-Castillo
Office of Administrative Law Judges
One Fordham Plaza, 4th Floor
Bronx, New York 10458

Re: Bennett *et al.* v. Kingsbridge Heights Rehabilitation Care Ctr.
SDHR Case Nos. 10112370, 10112373 and 10112529

Dear Judge Estrella-Castillo:

We represent respondent Kingsbridge Heights Rehabilitation Care Center (the "Center") in the above-referenced matters. We write in response to Plaintiffs' letter of August 14, 2007, in which Complainants' counsel requests the New York State Division of Human Rights (the "Division") to grant a dismissal in each of the above-reference matters (the "SDHR Actions") for administrative convenience. Complainants base their request on the receipt of their right-to-sue letters from the Equal Employment Opportunity Commission (the "EEOC"), which letters allow them to proceed in federal court.

Complainants' request for a dismissal based on "administrative convenience" is another example of the vexatious and harassing litigation strategy Complainants have pursued against the Center since they were terminated in May 2006. If Complainants proceed to federal court, the federal action will be the *fourth forum* in which Complainants have attempted to prevail on their claims based on the same set of facts initially raised and dismissed at the National Labor Relations Board in June 2006. Simply put, the Division should not encourage this type of forum shopping at the expense of the Center.

More specifically, the timing of Complainants' request is unjustifiable and prejudicial. As an initial matter, Complainants initiated the SDHR Actions *more than a year ago* and yet, they waited to seek a dismissal until now, approximately *one month* before the hearing in the Division is scheduled to begin. The parties have drafted and submitted all required pre-hearing filings, engaged in investigations, pre-hearing conferences and countless hours of preparation for the hearings over the past year and are ready to go to trial. Further, the Center has incurred *significant legal expenses* in connection with defending its legitimate termination decisions in the multiple forums selected by Complainants.

Secondly, it cannot be disputed that if Complainants honestly were concerned with administrative convenience, they would have sought a dismissal of the SDHR Actions as early as May 2006 when they initiated an action in the State Supreme Court based on similar facts.[1] In addition, they could have requested their right-to-sue letters from the EEOC at any time after January 2007 – *i.e.*, approximately 180 days after the Division duly-filed Complainants' charges with the EEOC. Instead, Complainants purposefully waited nearly *six months* until weeks before the hearing to request their right-to-sue letters from the EEOC. Complainants' baseless and indefensible delay in seeking their right-to-sue letters must bar the requested dismissals from the Division.

It is well-settled that laches is an equitable defense to actions that have been unreasonably delayed by charging parties. See Schulz v. State of N.Y., 81 N.Y.2d 336, 615 N.E.2d. 953 (1993) ("Laches is defined as 'such neglect or omission to assert a right as, taken in conjunction with the lapse of time..., and other circumstances causing prejudice to an adverse party . . . . '"; Dionisio v. Bd. of Ed., 128 A.D.2d 524, 512 N.Y.S.2d 458 (2d Dep't 1987)(barring claims under the doctrine of laches when petitioner showed no valid excuse for delay). In the specific context of discrimination suits, federal courts have found laches to bar charging parties from bringing suits following unreasonable delays based on their own complacency in monitoring the agencies that are investigating their charges. See, e.g., Garrett v. General Motors Corp., 844 F.2d 559, 561 (8th Cir. 1988)("the doctrine of laches is a proper defense to a Title VII action, and may be used to bar a lawsuit where the plaintiff is guilty of (1) unreasonable and unexcused delay, (2) resulting in prejudice to the defendant"); Whitfield v. Anheuser-Busch, Inc., 820 F.2d 243 (8th Cir. 1987)(same); Jeffries v. Chicago Transit Auth., 770 F.2d 676 (7th Cir. 1985)(same). For similar reasons, the Division should deny Complainants' request for a dismissal of the SDHR Actions.

Here, Complainants waited approximately six months, without justification, to request their right-to-sue letters from the EEOC. Further, they waited until what is essentially the eve of trial to request a dismissal of their SDHR Actions despite many opportunities to do so. Moreover, they have not established *any excuse* for the delay, let alone a reasonable excuse. Given the fact that Complainants are not proceeding *pro se* in the SDHR Actions or the action pending in State Court and have been *represented by counsel*[2] in each action since their terminations in May 2006, any delay must be found inexcusable and construed against Complainants.

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[1] Complainants filed Villalon et al. v. Kingsbridge Heights Rehabilitation Care Center and Kingsbridge Heights Care Center, Index No. 15806/07, in the Supreme Court of the State of New York, County of Bronx, on May 31, 2007.

[2] In fact, Complainants' counsel, Mr. Neil M. Frank, has been practicing in this area of the law for approximately forty years. Moreover, Mr. Frank is managing partner of his law firm and regularly practices before the National Labor Relations Board, federal and state courts, and state and federal human rights agencies. See http://www.laborlaws.com/Attorneys/Frank.htm (Aug. 15, 2007).

Finally, the Center has been substantially prejudiced as a result of Complainants' delay. As noted above, the Center has defended several actions, in three different forums, based on the same set of facts and events. In connection with these actions, the Center has incurred tens of thousands of dollars in legal fees and expenses defending against these meritless claims.[3] Complainants' dilatory tactics should not be rewarded. Further, Complainants' efforts to manipulate and "hopscotch" their way into every administrative and judicial forum available to them until they obtain a decision they approve of are an abuse of the systems in place intended to protect against legitimate claims of discrimination and a waste of everyone's time and resources. Accordingly, we request that Complainants' request for dismissals based on administrative convenience be denied and that the parties continue as scheduled on September 10, 2007.

Respectfully submitted,

Joel E. Cohen

cc: Neil M. Frank, Esq. (*via facsimile and federal express*)

NYK 1116546-1.057806.0011

[3] As an example of the lack of merit to Complainants' discrimination claims and the harassing nature of their litigation strategy, Complainants have not established *a scintilla* of evidence in support of their claims. In fact, on August 10, 2007, during the pre-hearing conference at the Division, Your Honor specifically asked Complainants' counsel and the Complainants themselves, to articulate the basis for their discrimination claims. Neither Complainants' counsel nor the Complainants could establish this essential element of their claims.

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FACSIMILE

Date: August 16, 2007 **Time Sent:**

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		Number of Pages, Including Cover:	4

Re: **Bennett *et al.* v. Kingsbridge Heights Rehabilitation Care Ctr.**
SDHR Case Nos. 10112370, 10112373 and 10112529

Message:

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********** -COMM. JOURNAL- ********** DATE AUG-16-2007 ***** TIME 13:30 *********

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MODE = MEMORY TRANSMISSION START=AUG-16 13:35 END=AUG-16 13:36

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